In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 11.12.2006.

Silendra Devi .... Petitioner

vs

Bhakra Beas Management Board and others .....Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Vijay Lath,Advocate,for the petitioner.

Kiran Anand Lall, J.

The petitioner, who is plaintiff in the suit, has filed this petition under Article 227 of the Constitution of India, for modification of the order dated 10.11.2006 (Annexure P1) of the appellate court vide which her appeal against the order of the trial court passed on her application under Order 39 rules 1 and 2 CPC, was disposed of. She has also sought restraint of the respondents from interfering with her peaceful possession and enjoyment of the suit land, demolishing the construction standing thereon, and also from raising further construction.

At the outset, it may be stated that a perusal of the impugned order dated 10.11.2006 shows that it is a consent order. That being so, the petition deserves outright dismissal.

Learned counsel for the respondents had undertaken before the appellate court, that during the pendency of suit, respondents would not dispossess the petitioner, from the room and khokha, except in due course of law, and further that in case they (respondents) raise any construction and it is found, later on, that the site underneath, that is a part of the property of the petitioner, they (respondents) would demolish the same, at their own expense. The learned counsel for the petitioner, it appears, was satisfied

with this undertaking and as such, he agreed that the order of lower court be modified to that extent i.e. in terms of the undertaking. The appellate court, accordingly, passed the following order on the basis of this agreement:-

> "that defendants will not dispossess the plaintiff from the Khokkha and the room except in due course of law. So far as construction over the suit property is concerned, in case defendants raise construction they will raise it at their own risk and later on in case it is found that construction has been raised on any property of plaintiff which has not been acquired by the defendants, then they will demolish that construction at its own expenses."

Since it was a consent order, the petitioner (plaintiff), surely, had no right to file this petition, challenging the same. But, inspite of that, she has impugned the same, in this petition, denying that her counsel had given consent, and further stating that the court wrongly recorded his consent and made that (consent) the basis for modifying the order of the trial court. She, of course, cannot be permitted to do so, in a petition under Article 227 of the Constitution of India.

The petition shall, accordingly, stand dismissed, with special costs of Rs.5000/-.

11.12.2006. (Kiran Anand Lall)
vs. Judge.